

04/05/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 8
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Aimco of Florida, Inc.**

Serial No. 75/**579,895**

Alexander Rhodes of **Annis, Mitchell, Cockey, Edwards & Roehn, P.A.** for **Aimco of Florida, Inc.**

Gina M. Fink, Trademark Examining Attorney, Law Office **103**
(**Michael Szoke**, Managing Attorney).

Before **Cissel, Hairston** and **Bucher**, Administrative
Trademark Judges.

Opinion by **Hairston**, Administrative Trademark Judge:

Aimco of Florida, Inc. has filed an application to
register the mark GRAND FLAMINGO for "real estate
development of apartments, condominiums, and resort
communities."¹

Registration has been finally refused under Section
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the

¹ Application Serial No. 75/579,895 filed October 30, 1998, based upon applicant's bona fide intention to use the mark in commerce. Applicant has disclaimed the word "GRAND" apart from the mark as shown.

ground that applicant's mark, if used in connection with the identified services, would so resemble each of the following marks, which are registered to the same entity, as to be likely to cause confusion, mistake or deception:

FLAMINGO HILTON for "hotel services";²

FLAMINGO PLAYERS CLUB for "casino services" and "hotel services";³ and

for "hotel services".⁴

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs⁵, but an oral hearing was not requested.

² Registration No. 1,123,064 issued July 24, 1979; combined Section 8 & 15 affidavit filed.

³ Registration No. 2,015,176 issued November 12, 1996. The words "PLAYERS CLUB" has been disclaimed apart from the mark as shown.

⁴ Registration No. 2,047,448 issued March 25, 1997.

⁵ We note that Examining Attorney Fink prepared the brief in this case, but that the case was handled by another Examining Attorney during the examination stage.

Applicant, in urging reversal of the refusal to register, contends that when the marks are viewed in their entirety, its mark is different from each of the cited marks and that real estate development services are not related to hotel or casino services.

The Trademark Examining Attorney maintains that the dominant portion of applicant's mark and each of the cited marks is the word FLAMINGO and therefore the marks are very similar. Further, the Examining Attorney contends that applicant's real estate development services and registrant's hotel and casino services are related.

Our determination under Section 2(d) of the Trademark Act is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. DuPont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services.

Turning first to the marks, although there are similarities between them due to the shared presence of the word FLAMINGO, we find that when considered in their entirety, applicant's mark and each of the cited marks create very different commercial impressions. Applicant's

mark GRAND FLAMINGO suggests that applicant's real estate development projects are imposing or impressive in nature. The cited marks FLAMINGO HILTON and FLAMINGO HILTON (stylized), on the other hand, suggest the Hilton hotel chain. The HILTON portion of these marks is admitted to be well known in connection with hotel services, and is likely to be perceived as the dominant portion of these marks. Moreover, the cited mark FLAMINGO PLAYERS CLUB creates a different commercial impression than GRAND FLAMINGO. FLAMINGO PLAYERS CLUB suggests an establishment where games are played, or in other words, a casino.

Moreover, as to the respective services, we are not persuaded, on this record, that real estate development of apartments, condominiums, and resort communities, on the one hand, and hotel and casino services, on the other hand, are related. In support of the contention that such services are related, the Examining Attorney submitted a number of NEXIS excerpts. Not surprisingly, these excerpts show that real estate development companies build all kinds of properties, including hotels, condominiums, and apartments, and that a development project may well include a hotel and a condominium and/or apartment complex. Such excerpts, however, are not probative of whether the specific services involved herein are of a kind which may

emanate from a single source. That is, the excerpts are not probative of whether real estate firms which develop apartments, condominiums, and resort communities also offer hotel and casino services under the same marks. Neither are the third-party registrations submitted by the Examining Attorney probative of this point. Such registrations cover real estate development of hotels and casinos, on the one hand, and the actual hotel and casino services, on the other hand. The problem, however, is that such registrations do not include the services in the cited registration, namely, real estate development of apartments, condominiums, and resort communities. While the third-party registrations may well serve to suggest that real estate firms which develop hotels and casinos also offer hotel and casino services, it cannot be said from such registrations that real estate firms which develop apartments, condominiums, and resort communities also offer hotel and casino services under the same marks.

In sum, when we consider the specific differences in applicant's mark and the cited marks with the fact that the record fails to establish that the involved services are related, it is our view that applicant's use of GRAND FLAMINGO for real estate development of apartments, condominiums, and resort communities is not likely to cause

Ser No. 75/579,895

confusion with the marks FLAMINGO HILTON, FLAMINGO HILTON (stylized), and FLAMINGO PLAYERS CLUB.

Decision: The refusal to register is reversed as to each of the cited registrations.

Ser No. 75/579,895